

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 15 2006

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

ALLAN BLAKE BYAKWAGA
BARIGYE,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 03-73054

Agency No. A77-284-082

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Argued and Submitted February 17, 2006
Pasadena, California

Before: NOONAN, KLEINFELD, and BERZON, Circuit Judges.

Allan Byakwaga Barigye, who claims that his true identity is Allan Semambo Matovu Barigye (Barigye), petitions for review of an order by the Board of Immigration Appeals (BIA) adopting and affirming an Immigration Judge's

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

decision and denying Barigye's motion to remand. Because Barigye's immigration hearing violated due process, we grant the petition and remand for a new hearing.

We have held that an immigration judge violates due process when he prevents a petitioner from presenting his detailed story at a hearing and does not allow the petitioner to elaborate on his written testimony. *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000). The IJ refused to allow Barigye to testify regarding the merits of his asylum claim; instructed him not to elaborate on his written asylum application; and, as the government concedes, refused to allow Barigye to provide any "evidence associated with claims that Allan Semambo Matovu Barigye was and might be persecuted and tortured in Uganda because of his Matovu name," after concluding that Barigye was not who he said he was.

Because the IJ prevented Barigye from presenting his full testimony as to his identity and his resulting asylum claim, Barigye's right to due process was violated. We do not reach the issue of whether the evidence compels us to conclude that the BIA erred in affirming the IJ's decision because the court may grant the petition and remand for a new hearing where the original hearing did not comport with due process, even where the BIA did not err. *Zolotukhin v. Gonzales*, 417 F.3d 1073, 1074-75 (9th Cir. 2005).

We GRANT Barigye's petition for review and REMAND for a new hearing.